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16 IN THE UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
18
19 CALIFORNIA COALITION FOR WOMEN
PRISONERS; R.B.; A.H.R.; S.L.; J.L.; J.M.; G.M.;
20 A.S.; and L.T., individuals on behalf of themselves
and all others similarly situated,

21 Plaintiffs,

22 v.

23 UNITED STATES OF AMERICA FEDERAL
BUREAU OF PRISONS, et al.,

24 Defendants.

Case No. 4:23-cv-04155-YGR

**PLAINTIFFS' NOTICE OF MOTION
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF MOTION FOR TEMPORARY
RESTRANING ORDER**

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NOTICE OF MOTION AND MOTION

Notice is hereby given that, as soon as they may be heard, Plaintiffs hereby move, pursuant to Civil L.R. 7-1 and 65-1, for a temporary restraining order (TRO) ordering Defendants the United States and the United States Bureau of Prisons (collectively the “BOP”) to (1) temporarily stay the transfer of incarcerated persons from Federal Correctional Institute (“FCI”) Dublin until such a time as it can be ensured by the Court and the Special Master that it proceeds without risk of further constitutional violation to the incarcerated population or violation of the existing preliminary injunction in this matter; (2) for those class members who have already been transferred, order Defendant BOP to produce all records associated with such transfers and allow Special Master Still the authority to conduct a review of these records to determine whether such transfers complied with constitutional standards; and (3) order BOP to maintain constitutionally appropriate conditions at FCI Dublin, including provision of medical care, food, water, blankets, and life’s other necessities.

Notice was given to counsel for the BOP that Plaintiffs were filing this TRO via email on April 18, 2024 at 10:57 PM. *See* Nimni Declaration, filed herewith (“Nimni Decl.”).

I. INTRODUCTION

BOP’s sudden decision to clear out FCI Dublin’s over six hundred residents on a week’s notice has wrought chaos to a population that, as this Court has found, is already at risk of “imminent and serious medical injury, including lack of treatment for serious medical ailments, psychological distress, and risk of suicide,” among others harms. ECF No. 222 at 1, 42. This urgent crisis is entirely of BOP’s own making and the agency’s insistence that the closure was made in the ordinary course for proper reasons – when there was absolutely no sign that such a major action had been planned until BOP announced it a week after the appointment of the Special Master – already strained credulity. As set forth below, BOP’s actions in the past few

1 days – increasingly and audaciously flouting the Court’s Guidance on Transfer Of Inmates (ECF
 2 Nos. 252-1, 254-1, and 260-1) – further demonstrate that BOP’s real aim is to change the status
 3 quo as quickly and as irreversibly as possible to evade this Court’s oversight.

4 BOP is currently in the process of dispersing a Plaintiff class this Court certified after due
 5 consideration – sexual abuse survivors, retaliation victims, individuals with serious unmet
 6 medical needs – without ensuring, as directed by the Court, that [REDACTED]
 7 [REDACTED]

8 [REDACTED] While the Court may not prevent BOP
 9 from closing a prison in the due course, as described below, it has the authority, jurisdiction and
 10 duty to ensure that the process is carried out in compliance with relevant federal laws and in
 11 accordance with constitutional standards. Where such violations of the Constitution and federal
 12 law are at issue, this Court does not have to cede to BOP’s manufactured urgency. Accordingly,
 13 the Court should immediately intervene to temporarily halt any further transfers out of Dublin
 14 until the Court and the Special Master can ensure that the transfer process of all remaining
 15 individuals is carried out in a duly considered, constitutionally compliant manner.

16 **I. LEGAL STANDARDS**

17 The legal standard for a temporary restraining order and a preliminary injunction are the
 18 same: A movant must demonstrate (1) a likelihood of success on the merits, (2) a likelihood of
 19 irreparable harm absent preliminary relief, (3) the balance of equities tips in favor of the plaintiff,
 20 and (4) a TRO is in the public interest. *Martinez Franco v. Jennings*, 456 F. Supp. 3d 1193,
 21 1197 (N.D. Cal. 2020). A TRO is particularly appropriate where, in meeting these factors, it
 22 seeks to maintain the status quo. *See East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779
 23 (9th Cir. 2018).

1 It is “well established that the deprivation of constitutional rights ‘unquestionably
 2 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Other
 3 irreparable harm includes economic hardship and separation from family. *Martinez Franco*, 456
 4 F. Supp. 3d at 1200. And when evaluating the public interest for a TRO, courts “must consider
 5 the hardship to [a detained individual’s] family and friends and the waste of public resources
 6 from the expense of his possibly unnecessary detention.” *Id.*

7 II. FACTS

8 **A. BOP Suddenly Announces Closure Only After Special Master Is Appointed and the Court Issues Mandatory Guidance on Transfers**

9 Ten days after the appointment of Special Master Still, Defendant BOP announced plans
 10 to close FCI Dublin and transfer the entire incarcerated population to other facilities. ECF No.
 11 257 at 2-3. Counsel for BOP [REDACTED]

12 [REDACTED] See ECF No. 251. Without informing the
 13 Special Master nor class counsel, BOP Director, Colette Peters, made a public statement to the
 14 media that it was closing FCI Dublin to address “employee misconduct,” admittedly because
 15 “FCI Dublin is not meeting expected standards.”¹ Director Peters also told the media that the
 16 closure may be “temporary” and that “none of the 203 employees would lose their jobs.”² After
 17 quietly transferring small groups of incarcerated individuals in the preceding weeks, BOP
 18 quickly began mass transfers at 6 am on Monday morning.³

21 ¹Though Plaintiffs’ counsel has not been provided updated information about the numbers of
 22 class members transferred since the class was certified, or since the BOP announced the abrupt
 23 closure of FCI Dublin, the media reports that at least 100 incarcerated people were transferred on
 24 the morning of Monday, April 15, coinciding with Director Peters’s public statement. See
<https://apnews.com/article/federal-prison-dublin-california-sexual-abuse-bureau-of-prisons-17731ecb5d0a14adf6011e853bf7e05d>

² <https://www.ktvu.com/news/fci-dublin-closing-women-transferred-elsewhere>

³ *Id.*

1 As BOP hastily began mass transfers, the Court halted movement at FCI Dublin until
2 measures were taken to ensure that the Plaintiff class was moved or released appropriately,
3 providing Guidance on Transfer Of Inmates, which it updated throughout the week. ECF Nos.
4 252-1, 254-1, and 260-1. The Court's Guidance on Transfer Of Inmates [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 **B. BOP Is Not Complying in Good Faith with the Court's Guidance on**
15 **Transfers and BOP Is Violating Dublin Residents' and Transferees'**
Constitutional Rights

16 The BOP has given short shrift to implementing the Court's Guidance On Transfer Of
17 Inmates. Plaintiffs' counsel have received frantic reports from dozens of class members about
18 the chaos unfolding at the prison over the past four days, summarized below and in the
19 declaration of Susan M. Beaty, filed herewith, and the accompanying exhibits thereto.

20 The Court may consider this evidence even to the extent that it incorporates hearsay
21 because “[t]he urgency of obtaining [the emergency relief] necessitates a prompt determination
22 and makes it difficult to obtain affidavits from persons who would be competent to testify at
23 trial. The trial court may give even inadmissible evidence some weight, when to do so serves the
24 purpose of preventing irreparable harm before trial.” *Flynt Distrib. Co. v. Harvey*, 734 F.2d

1 1389, 1394 (9th Cir. 1984) (citing 11 C. Wright and A. Miller, Federal Practice and Procedure,
 2 Civil, § 2949 at 471). Plaintiffs are prepared to present the following facts in admissible form,
 3 including through live testimony, at the earliest opportunity amenable to the Court.

4 **1. Transferees Are Being Subjected to Abusive Treatment in the
 Rushed Confusion**

5 Incarcerated people report that staff are narrowly focused on transferring as many people
 6 as soon as possible, and they are not taking appropriate care in an effort to empty the prison “by
 7 Friday.” Class members have been fully processed for transfer, only to be returned to their
 8 dorms, sometimes multiple times in a single day. This morning a group of over 20 people were
 9 removed from their unit to be shipped out—as they were being processed, they had limited access
 10 to food, water, or the toilet, and at one point were all placed in a single holding cell, only to be
 11 returned to their dorm seven hours later. Another group of people sat on a bus, shackled, for
 12 over three hours straight before unloading. One woman shared that after she was pulled for
 13 transfer on Monday, she was strip searched and forced to remove her tampon in front of two
 14 officers. She was not provided any materials to clean herself with, or any menstrual products for
 15 the journey, and sat in the bus bleeding on herself for hours before being returned to her dorm;
 16 she has not had access to her belongings or clean underwear for four days. Another class
 17 member was designated for transfer and processed for hours today, then returned to the Camp
 18 this evening without any of her possessions, including her medications.

19 Staff themselves acknowledge these deficiencies—class members report that officers
 20 asked a group of women waiting to be loaded on the bus “where are you being transported to?”
 21 while other officers characterized the rushed transfers as a “mess” and a “disaster.”

22 **2. BOP Is Not Properly Classifying and Releasing Eligible Transferees**

23 Counsel has also received numerous reports that BOP continues to transfer class
 24 members who are eligible for release, including to home confinement or a halfway house, or

1 through compassionate release. In one case, [REDACTED]
 2 [REDACTED]
 3 [REDACTED] –only after repeated intervention by Plaintiffs’
 4 counsel and the special master was she appropriately classified for immediate release. This case
 5 raises serious concerns about miscalculations and misclassifications for the hundreds of other
 6 class members who have not received the same scrutiny, and who BOP seeks to hastily transfer
 7 without proper consideration.

8 Indeed, class members report serious issues with Dublin’s systems for tracking potential
 9 release. One class member reports that the last time she was “teamed,” her counselor showed her
 10 an empty folder and told her that there was no documentation of any of her programming or
 11 certificates even though she had completed numerous classes and programs over the years.
 12 Another individual reports that she applied for and was approved for compassionate release last
 13 year by Warden Jusino, but was told Dublin has no record of her request or the warden’s
 14 approval.

15 Plaintiffs’ counsel are aware of numerous people who have been transferred with pending
 16 compassionate release requests, including at least five survivors of Dublin staff sexual assault.
 17 Counsel have also spoken with multiple noncitizens who are currently eligible for release to
 18 home confinement or halfway house, but have been erroneously told they do not qualify because
 19 of their immigration status, and are instead slated for transfer. Counsel has also received many
 20 reports of people designated or transferred to the opposite coast, hundreds or thousands of miles
 21 from their families and children. All of this has occurred without BOP providing evidence as to
 22 how BOP is able to suddenly absorb 600 new entrants to other facilities without gaps in medical
 23 care and with protections against retaliation.

1 **3. Individuals Are Losing Their Personal Property**

2 Many class members also report serious issues with confiscation and transportation of
 3 property. On Monday and Tuesday, BOP staff instructed class members to throw away all of
 4 their property that did not fit in a single bag. Many distraught class members were forced to
 5 throw away sentimental possessions (like family photographs, letters, and books), items of
 6 significant monetary value (like clothing and shoes), and even medications. The process was
 7 later modified, and class members were allowed to pack a single bag, and ship one box home, or
 8 pay to ship additional boxes if they could afford postage (many cannot). Staff were to “pack
 9 out” the bag in front of people, providing documentation of the process and any discarded items.
 10 As of today, staff are “packing out” property outside the presence of incarcerated people, who
 11 have no way of knowing what was actually packed and what was thrown away, and staff are not
 12 providing any documentation of this process. Multiple class members were not offered the
 13 opportunity to ship possessions home. Once people are “packed out” they no longer have access
 14 to their possessions—some people have now been without extra clothes, hygiene, and medications
 15 for three days. One class member reported she was processed for transfer—including being strip
 16 searched and handcuffed—and when she returned to her dorm hours later, staff told her they
 17 “lost” her bag.

18 **4. Proper Medical Clearance Is Not Being Followed**

19 Throughout the week, including since the Court’s Guidance was modified, class members
 20 have reported disturbing deficiencies in the medical clearance process. Class members report
 21 that BOP has medically cleared people with unmet medical needs, and has even transported
 22 people without medical clearance. Multiple distraught class members in FCI recounted that,
 23 while a group of over 20 individuals waited in a small holding cell to board a bus, a BOP
 24 medical provider came and read out the names of four people who needed to be medically

1 cleared—but those four individuals were long gone from the facility. Multiple people at the Camp
 2 called to say that staff were repeatedly paging a class member, J.G., over the loudspeaker for her
 3 medical clearance appointment, hours after J.G. had already been transferred. One sexual assault
 4 survivor who has been awaiting a cardiologist appointment for months following a major cardiac
 5 event, and who was approved for compassionate release last year, was reportedly transferred this
 6 afternoon without proper medical clearance.

7 Several class members who were medically cleared described a cursory process where
 8 BOP providers reviewed existing medical records, took vital signs, and declared them “cleared,”
 9 without apparent oversight. Providers asked questions about documented medical conditions,
 10 but did not address undocumented and untreated medical needs. One individual shared that she
 11 was cleared in less than ten minutes, despite the fact that she has serious liver and heart
 12 conditions and an outstanding cardiology appointment and is currently experiencing chest pains,
 13 all documented in her pending compassionate release request. One transgender class member
 14 reported that he was cleared and transported despite being days overdue for his testosterone shot.

15 **5. Conditions For Those That Remain Are Abysmal**

16 For the hundreds of people who remain incarcerated at FCI Dublin, conditions remain
 17 dangerous and alarming. Class members report that there is functionally no medical or mental
 18 healthcare. Due to BOP’s manufactured crisis, many already-traumatized people are
 19 experiencing mental health crises. Plaintiffs’ counsel has received countless calls from sobbing
 20 clients, describing scenes of people having breakdowns across housing units. Thursday morning,
 21 a group of class members called for psychology, and despite being told someone would come see
 22 them in fifteen minutes, no one ever did. One survivor of staff sexual assault who has been held
 23 in solitary confinement for over two weeks was taken to suicide watch on Tuesday; she has not
 24 seen a psychiatrist, and as of this evening she is only one of three people left in the SHU, and has

1 not received fresh linens or hygiene products as required. Another survivor of staff sexual
 2 assault has had major panic attacks every day this week, and suffered a seizure on Tuesday;
 3 when medical staff finally came to check on her the following morning, the officer yelled at her:
 4 “don’t start with your bullshit.” One elderly class member has had a migraine for weeks, and is
 5 currently experiencing numbness in her hands and arms. She has sent emails and messages, and
 6 even went to the medical office twice to seek care, but has not been seen; multiple people have
 7 called to express concern for her, and her family has called BOP to no avail. Class members and
 8 loved ones continue to express concern for I.C., an 80 year old woman with serious health
 9 conditions who has been designated for transfer.

10 Class members also report intense retaliation and hostility from staff, who blame
 11 incarcerated people for Dublin’s closure. Multiple women reported that CO Morasco screamed
 12 at a group of people in their housing unit, yelling, “it’s your fault that Dublin is closing” and
 13 “this is what you wanted.” Last night, as guards yelled at women in a housing unit, the women
 14 raised concerns about how they were being treated, and the guards threatened to throw them all
 15 in SHU. Various staff have reportedly made public, derogatory comments about both the Court
 16 and the special master to incarcerated people. One guard complained that “the judge shouldn’t
 17 mess with BOP.” Class members report that temporary, outside staff are not wearing name tags,
 18 and therefore cannot be identified.

19 III. ARGUMENT

20 A. The Court Should Not Be Rushed Into Accepting BOP’s Manufactured Urgent Timeline For Closure

21 BOP’s assertions that it has been “considering the closure of FCI Dublin for many years”
 22 and that “[e]xtensive resources and employee hours have already been invested in” the shutdown
 23 and transfer of the Plaintiff class to other facilities (ECF No. 257 at 3), cannot be squared with its
 24 actions. BOP spent the last six months arguing to this Court that no injunctive relief was
 25

1 necessary because FCI Dublin was a changed facility and the “BOP completely overhauled the
 2 FCI Dublin Executive Team.” *See generally*, ECF No. 45-5. Indeed, there is no way BOP can
 3 credibly assert that the shambolic process currently underway was truly the result of considered
 4 planning for “many years” to which “extensive resources” have been committed. Instead, the
 5 only reasonable inference is that the closure was hastily put together in the wake of the Special
 6 Master’s appointment. *See* ECF No. 257 at 3 (BOP notified the Court “of the impending facility
 7 closure on April 12, 2024.”). Putting aside the impropriety of taking such an action for the
 8 purpose of evading judicial oversight meant to protect the very powerless people BOP is now
 9 actively hurrying off in busloads with mere hours to prepare, it strains credulity to believe that
 10 BOP is simply carrying out a long conceived plan to close this facility.

11 True, BOP may decide to close FCI Dublin, but its discretion is bounded both by the
 12 Constitution and by statutory frameworks that apply to limit its power. As a practical matter,
 13 BOP has provided no valid reason whatsoever for why it needs to complete that closure and the
 14 transfer of over six hundred incarcerated individuals in a week’s time with absolutely no notice.
 15 BOP has simultaneously stated that no employee will lose their job but has also allowed a
 16 majority of employees to not report for duty. ECF No. 257 at 4. They have argued that they
 17 have adequate medical care, and now that they cannot possibly treat everyone at FCI Dublin so
 18 they need to shut the facility down, but that also, somehow, they still are competent to medically
 19 evaluate residents. *See id.* at 5-6, 13. The only reasonable inference from the rush and the
 20 inconsistencies is that it is a self-serving attempt to evade this Court’s review. As the Court’s
 21 efforts to intervene this week to provide guardrails on the process amply show, BOP is well
 22 aware that the more rushed this process is, the faster it can create a *fait accompli* before judicial
 23 scrutiny can be truly applied. But, as the authorities described below demonstrate, the Court
 24 need not be bulldozed into accepting BOP’s artificial schedule. Because BOP’s manufactured

1 urgency is leading to the transfer of the Plaintiff class in violation of federal law governing
 2 transfer determinations, and in violation of constitutional rights that this Court ordered protected,
 3 the Court should stay the process down and ensure proper oversight is effectuated in practice,
 4 and has the authority to do so.

5 **B. The Court’s Guidance On Transfer Of Inmates From FCI Dublin Is Not
 6 Being Followed**

7 As explained at length above, it is clear that the Court’s Guidance On Transfer of Inmates
 8 is not being followed in good faith by the BOP. At its best it has devolved into a cursory box
 9 checking exercise and at its worst, it is being ignored entirely. The protections currently in place
 10 are dysfunctional in practice and must be reformed by halting any further transfers from FCI
 11 Dublin. These orders were not entered into lightly by the Court. They are there to ensure that
 12 the constitutional rights the Court sought to protect through its grant of preliminary relief are not
 13 now thwarted by the same agency that has mismanaged FCI Dublin for years.

14 **C. The Court Has The Authority To Ensure That BOP Effectuates Inmate
 15 Transfers In A Constitutional And Statutorily-Compliant Manner**

16 When making transfer determinations, BOP must consider five factors, including “the
 17 resources of the facility contemplated” and “the history and characteristics of the prisoner.” 18
 18 U.S.C. § 3621(b). These factors are mandatory, and all transfer determinations must consider
 19 each one. *See Rodriguez v. Smith*, 541 F.3d 1180, 1186 (9th Cir. 2008) (“The BOP regulations
 20 necessarily violate the unambiguously expressed intent of Congress conveyed in § 3621(b),
 21 which expressly instructs that all placement and transfer determinations take into consideration
 22 each of the five factors enumerated in the statute. That Congress intended the BOP to apply each
 23 of the factors is evidenced by the invocation of the word ‘and’ between the fourth and fifth
 24 factors.”); *see also Rodriguez v. Copenhaver*, 823 F.3d 1238, 1242 (9th Cir. 2016) (“Section

1 3621(b) gives the Bureau of Prisons discretion to designate the facility, but lists the factors that
 2 the Bureau of Prisons must consider when it exercises discretion.”).

3 In assessing BOP’s transfer decisions, the court “***does have jurisdiction to decide***
 4 ***whether the Bureau of Prisons acted contrary to established federal law, violated the***
 5 ***Constitution, or exceeded its statutory authority when it acted pursuant to 18 U.S.C. § 3621.***”
 6 *Rodriguez v. Copenhaver*, 823 F.3d 1238, 1242 (9th Cir. 2016) (emphasis added); *see also*
 7 *Ahmad v. Jacquez*, 860 Fed. Appx. 459, 462 (9th Cir. 2021) (“Though § 3621(b) strips the court
 8 of jurisdiction to consider Ahmad’s individual challenge, it does not preclude review of all
 9 challenges that might implicate individual designation decisions.”). Of course, here, § 3621(b)’s
 10 jurisdiction stripping provision does not apply by its own terms. § 3621(b) only strips
 11 jurisdiction of “a designation of a place of imprisonment.” 18 U.S.C. § 3621(b). In this motion
 12 for a TRO Plaintiffs do not challenge the designation of where people in prison may be sent.
 13 Rather, Plaintiffs seek to stay transfers pending an evaluation which has no effect on where an
 14 incarcerated person may eventually be sent.

15 BOP’s current dysfunctional approach to immediate transfers is contrary to established
 16 law and exceeds its statutory authority because it fails to consider mandatory factors under 18
 17 U.S.C. § 3621. This Court has authority to ensure that transfers are accomplished in a
 18 statutorily-compliant manner. *See Duren v. Doerer*, No. 5:23-cv-00772-FWS-KES, 2023 WL
 19 9289984, at *7 (C.D. Cal. Dec. 1, 2023) (“The Complaint argues that . . . the BOP violated 18
 20 U.S.C. § 3621(b) by failing to analyze all five factors listed in that statute. . . . This argument
 21 appears to be judicially reviewable, notwithstanding the statutory limitations on judicial review
 22 of BOP placement decisions. Plaintiff appears to be arguing that the BOP’s policy ‘is contrary to
 23 established federal law’ and/or ‘exceeds [the BOP’s] statutory authority’ because, he alleges, the
 24 BOP categorically excludes some inmates based on the percentage of their sentence served,

1 without considering the factors in § 3621.”), *R&R accepted*, 2024 WL 187672 (C.D. Cal. Jan.
 2 16, 2024); *cf. Izaguirre-Guerrero v. Warden, FCI Mendota*, No. 1:23-cv-00845-EPG-HC, 2024
 3 WL 1333353, at *2 (E.D. Cal. Mar. 28, 2024) (“Given that application of FTCs [‘First Step Act
 4 Time Credits’] to eligible prisoners who have earned them is *required*, not discretionary, under
 5 U.S.C. § 3632(d)(4)(C), the Court finds that dismissal is not warranted on the ground that it lacks
 6 jurisdiction to compel BOP discretionary action with respect to FTCs.”).

7 For example, BOP has made no showing that it considers the “the resources of the facility
 8 contemplated” for transfer. The Plaintiff Class has significant medical and mental health care
 9 needs, exacerbated by years of medical neglect, sexual abuse and retaliation suffered at FCI
 10 Dublin. But BOP has not considered whether the transfer facilities have sufficient resources to
 11 provide constitutionally-adequate medical and mental health care treatment on an individualized
 12 basis for hundreds of new arrivals. Similarly, BOP has failed to consider “the history and
 13 characteristics of the prisoner[s]” who are being transferred. The Plaintiff Class includes
 14 individuals sexually assaulted by staff at FCI Dublin, and [REDACTED]

15 [REDACTED], ECF No. 45-4 at ¶ 38, and no BOP staff will lose
 16 their job, despite [REDACTED] BOP has not considered
 17 whether individuals with a history of surviving sexual abuse are being transferred to the same
 18 facilities as abusers. Moreover, BOP has not considered the impact that a disorganized,
 19 haphazard, and immediate transfer has on the already traumatized and distrustful population at
 20 FCI Dublin.

21 Further, BOP’s instant actions likely violate this Court’s existing order granting
 22 preliminary injunctive relief in this matter and independently violate the constitutional rights of
 23 class members. This Court also has jurisdiction to decide whether BOP violates the Constitution
 24 by using immediate transfers to evade a preliminary injunction and Special Master oversight

1 predicated on severe constitutional violations. *See Copenhaver*, 823 F.3d at 1242. This Court
 2 ordered relief to protect against certain constitutional violations, and the BOP now seeks to
 3 evade that relief and potentially exacerbate those violations in ways already identified by
 4 Plaintiffs. *See* April 16 and April 18 letters from K. Janssen to Special Master. Prison authority
 5 is always bounded by constitutional guard rails and “[c]ourts may not allow constitutional
 6 violations to continue simply because a remedy would involve intrusion into the realm of prison
 7 administration.” *Brown v. Plata*, 563 U.S. 493, 511 (2011). This Court found that BOP
 8 “proceeded sluggishly with intentional disregard of the inmates’ constitutional rights despite
 9 being fully apprised of the situation for years.” ECF No. 222 at 1. A one-week rush to transfer
 10 the entire FCI Dublin population comes at the expense of the incarcerated individuals and puts
 11 the same constitutional rights BOP was already violating, in further peril.

12 **D. A TRO Should Issue**

13 **1. Plaintiffs Are Likely To Succeed On The Merits**

14 This Court has already found that Plaintiffs are likely to succeed on the merits of
 15 establishing that BOP violated their constitutional rights. ECF No. 222. As demonstrated above,
 16 conditions for the certified class have drastically regressed over the past week. As a result
 17 Defendants continue to violate Plaintiffs’ constitutional rights and transfers are being conducted
 18 without compliance with the Court’s Guidance on Transfer Of Inmates or 18 U.S.C. § 3621.

19 **2. Plaintiffs Are Likely To Suffer Irreparable Harm In the Absence of
 20 The TRO**

21 The chaos caused by the BOP’s insistence on transferring the entire Plaintiff class with
 22 extreme and artificial haste is making it impossible for BOP to meaningfully comply with the
 23 limited protections afforded to the Plaintiff class by the Court’s Guidance on Transfer Of
 24 Inmates and this Court’s ordered preliminary relief. Absent halting BOP’s reckless transfer
 25 process, the entire Plaintiff class will be improperly transferred without further recourse. As one

example, many may be transferred away from family, causing irreparable harm. *See Martinez*, 456 F. Supp. 3d at 1200. Others with serious medical conditions will also face irreparable harm if their emergency medical needs are not adequately assessed prior to transfer, especially when they may be moved to facilities where it is unclear whether there are adequate medical resources available. Finally, this Court’s order granting preliminary relief recognized the severe harms attendant to the retaliation faced by Plaintiffs. No protection from such retaliation has been indicated and evaluation for such risk is not part of BOP’s protocols. As such, despite being found likely in violation of the constitution, BOP may be free now to retaliate against class members in new facilities, without oversight, causing severe, irreparable harm.

3. The Balance Of Equities Tips In Plaintiffs’ Favor

The balance of equities are entirely in favor of the Plaintiff Class. There is no harm to BOP from halting its mass transfer of the Plaintiff class—that is simply maintenance of the status quo prior to this Monday morning. By contrast, as explained throughout, the Plaintiff class is at grave risk of continued harm absent Court intervention.

4. A TRO Is In The Public Interest

As explained above, the Plaintiff class is facing an imminent risk of constitutional harm and “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002.

IV. CONCLUSION

For the reasons stated herein, the Court should grant the Plaintiffs request for a temporary restraining order. The Court should order: (1) a temporary stay to the transfer of incarcerated persons from Federal Correctional Institute (“FCI”) Dublin until such a time as it can be insured by the Court and the Special Master that it proceeds without risk of further constitutional violation to the incarcerated population or violation of the exiting preliminary injunction or

federal law; (2) for those class members who have already been transferred, order Defendant BOP to produce all records associated with such transfers and allow Special Master Still the authority to conduct a review of these records to determine whether such transfers complied with constitutional standards; and (3) order BOP to maintain constitutionally appropriate conditions at FCI Dublin, including provision of medical care, food, water, blankets, and life's other necessities.

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Respectfully submitted,

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